

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER, State Bar No. 226937
Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 355-5437
Facsimile: (415) 703-1234

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues Against:

Case No. 2008-295

12 **ROMUALDO CORREIA MELO**

OAH No.

13 584 Castro Street, #641
San Francisco, California 94114

STATEMENT OF ISSUES

14 Applicant for a Registered Nurse License

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Statement of
19 Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
20 Department of Consumer Affairs.

21 2. In or about September 2006, the Board of Registered Nursing (Board),
22 Department of Consumer Affairs received an application for a registered nurse license from
23 Romualdo Correia Melo (Respondent). In or about March 2007, the Board received a
24 reapply/repeat examination application for a registered nurse license from Respondent. In or
25 about July 2007, the Board received a second reapply/repeat examination application for a
26 registered nurse license from Respondent. On all three applications Respondent certified under
27 penalty of perjury to the truthfulness of all statements, answers, and representations in the
28 applications. The Board denied Respondent's applications on October 29, 2007.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

3. This Statement of Issues is brought before the Board of Registered

5

4. **Section 2736** of the Business and Professions Code (Code) provides, in

9

“(a) A board may deny a license regulated by this code on the grounds that the

2

(3) Done any act which if done by a licentiate of the business or profession in

The board may deny a license pursuant to this subdivision only if the crime or act

8

9

“The board may take disciplinary action against a certified or licensed nurse or

22

23

24

“ In addition to other acts constituting unprofessional conduct within the meaning

28

licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

“(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.”

• • •

8. **Section 4021** of the Code states:

“ ‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

9. **Section 4022** of the Code states:

“ ‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

“(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without prescription,’ ‘Rx only,’ or words of similar import.

“(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale by or on the order of a _____,’ ‘Rx only,’ or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

10. **Section 4060** of the Code states, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, veterinarian, or nautropathic doctor pursuant to Section 3640.7 or

1 furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
3 Section 3502.1., or naturopathic doctor pursuant to Section 3640.5.

4 11. **California Health and Safety Code 11550(a)** states:

5 “(a) No person shall use, or be under the influence of any controlled
6 substance...or...a narcotic drug classified in Schedule III, IV, or V, except when administered by
7 or under the direction of a person licensed by the state to dispense, prescribe, or administer
8 controlled substances. It shall be the burden of the defense to show that it comes within the
9 exception. . .”

10 12. **California Health and Safety Code section 11170**, states:

11 “No person shall prescribe, administer, or furnish a controlled substance for
12 himself.”

13 **DANGEROUS DRUGS/CONTROLLED SUBSTANCES**

14 13. **Methamphetamine** is a Schedule II controlled substance as designated by
15 Health and Safety Code section 11055(d)(2) and a dangerous drug per Business and Professions
16 Code section 4022.

17 14. **Clonazepam** is a Schedule IV controlled substance as designated by
18 Health and Safety Code section 11057(d)(7) and a dangerous drug per Business and Professions
19 Code section 4022.

20 **FACTUAL ALLEGATIONS**

21 15. Respondent has a history of drug abuse. Respondent has used
22 methamphetamine on numerous occasions. Respondent has used methamphetamine as recently
23 as July 2007. Respondent has admitted this history of drug abuse.

24 16. In or April 2007, respondent entered the Betty Ford Clinic for his
25 addiction to methamphetamine.

26 17. On or about July 3, 2007, Respondent was arrested for violating Health
27 and Safety Code 11550(a)(using or being under the influence of a controlled substance).
28 Respondent was using methamphetamine.

1 18. On or about December 15, 2007, Respondent was arrested for violating
2 Vehicle Code section 23513(a)(driving under the influence of alcohol and causing bodily injury
3 to another). The circumstances surrounding Respondent's arrest are as follows:

4 a. Respondent was involved in an injury accident. Respondent rear-
5 ended another vehicle that was stopped in front of him. Respondent did not see the vehicle that
6 was stopped in front of him. After the Police arrived, Respondent submitted to and failed the
7 field sobriety tests. Respondent was arrested for violating Vehicle Code section 23513(a).
8 Respondent submitted to a breath alcohol test which revealed that Respondent had a blood
9 alcohol level of .12%.

10 b. During the arrest, Police found Respondent in possession of four
11 pills of Clonazepam.

12 **FIRST CAUSE FOR DENIAL OF APPLICATION**

13 (Unprofessional Conduct)

14 19. Respondent's application is subject to denial under sections 480 and
15 2761(a) of the code in that Respondent engaged in unprofessional conduct. The circumstances
16 are set forth in paragraphs 15-18, above.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 (Unprofessional Conduct- Possession of Drugs)

19 20. Respondent's application is subject to denial under sections 480 and
20 2762(a) of the code in that Respondent possessed controlled substances in violation of the law.
21 The circumstances are set forth in paragraphs 15-18, above.

22 **THIRD CAUSE FOR DENIAL OF APPLICATION**

23 (Unprofessional Conduct- Dangerous Use of Drugs)

24 21. Respondent's application is subject to denial under sections 480 and
25 2762(b) of the code in that Respondent used controlled substances to an extent or in a manner
26 dangerous or injurious to himself or herself, any other person.. The circumstances are set forth in
27 paragraphs 15-18, above.

28 ///

1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 (Unprofessional Conduct- Dangerous Use of Alcohol)


3 22. Respondent's application is subject to denial under sections 480 and
4 2762(b) of the code in that Respondent used alcohol to an extent or in a manner dangerous or
5 injurious to himself or any other person. The circumstances are set forth in paragraph 18, above.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 9 1. Denying the application of Romualdo Correia Melo for a Registered Nurse
10 License;
11 2. Taking such other and further action as is deemed necessary and proper.

12
13 DATED: 4/23/08

14
15 
16 RUTH ANN TERRY, M.P.H., R.N.
17 Executive Officer
18 Board of Registered Nursing
19 Department of Consumer Affairs
20 State of California
21 Complainant
22
23
24
25
26
27
28